

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

This is the entire bill with amendment incorporated. Sections of bill that are being amended or are new Sections have the "lead-in" shaded.

COMMITTEE AMENDMENT "." TO LD 1798, An Act to Reform Land Use Planning in the Unorganized Territory

**Sec. 1. 5 MRSA §12004-D, sub-§1**, as amended by PL 2007, c. 617, §1, is repealed.

**Sec. 2. 5 MRSA §12004-D, sub-§1-A** is enacted to read:

**1-A.**

**Sec. 3. 12 MRSA §681**, as amended by PL 2009, c. 401, §1, is further amended to read:

**§ 681. Purpose and scope**

The Legislature finds that it is desirable to extend principles of sound planning, zoning and ~~subdivision control~~ development to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to support and encourage Maine's natural resource-based economy and strong environmental protections; to encourage appropriate residential, recreational, commercial and industrial land uses; to honor the rights and participation of residents and property owners in the unorganized and deorganized areas while recognizing the unique value of these lands and waters to the State; to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper long-term health, use and value of these areas and to Maine's natural resource-based economy; to prevent discourage the intermixing of incompatible industrial, commercial, residential and recreational activities; to provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate usedetrimental uses of the water in these areas; and to preserveconserve ecological and natural values.

The Legislature declares it to be in the public interest, for the public benefit, for the good order of the people of this State and for the benefit of the property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and well-managed multiple use, including conservation, of land and resources and to encourage and facilitate regional economic viability. The Legislature acknowledges the importance of these areas in the continued vitality of the State and to local economies. Finally, the Legislature desires to encourage the appropriate use of these lands by the residents of Maine and visitors in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

**Sec. 4. 12 MRSA §682, sub-§1**, as amended by PL 2009, c. 615, Pt. D, §1, is repealed and the following enacted in its place:

**1. Unorganized and deorganized areas.**      "Unorganized and deorganized areas"  
includes:

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

- A. All unorganized and deorganized townships;
- B. Plantations that have not received commission approval under section 685-A, subsection 4-A to implement their own land use controls;
- C. Municipalities that have organized since 1971 that have not received commission approval under section 685-A, subsection 4-A to implement their own land use controls; and
- D. All other areas of the State that are not part of a municipality except Indian reservations.

For the purposes of permitting a community-based offshore wind energy project and structures associated with resource analysis activities necessary for such an intended project, the area of submerged land to be occupied for such a project and resource analysis structures is considered to be in the unorganized or deorganized areas.

**Sec. 5. 12 MRSA §682, sub-§20** is enacted to read:

**20. Planned subdistrict.** "Planned subdistrict" means a delineated area for which a specific land use plan and standards have been agreed to by the owner of land within the delineated area and approved by the commission.

**Sec. 6. 12 MRSA §683**, as amended by PL 2009, c. 328, §1, is repealed.

**Sec. 7. 12 MRSA §683-A** is enacted to read:

**§ 683-A. Creation of Maine Land Use Planning Commission**

The Maine Land Use Planning Commission, as established by Title 5, section 12004-D, subsection 1-A to carry out the purposes stated in section 681, is created within the Department of Conservation, and in this chapter called "the commission." The commission is charged with implementing this chapter. The commission consists of 9 members, **nominated** ~~or designated~~ in accordance with subsections 1 and 2. **All nominations under this section are subject to review by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Senate.**

**1. Nomination by the Governor.** The ~~Except as provided in subsection 2, the~~ Governor shall **nominate 1 member** to the commission. In selecting **nominees**, the Governor shall actively seek and give consideration to persons residing in or near the unorganized and deorganized areas of the State and to persons residing on unorganized coastal islands. **Nominees** to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. **A nominee must:**

- A. Reside in the commission's jurisdiction;
- B. Work in the commission's jurisdiction;

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

C. Be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; or

D. Have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as these activities affect the commission's jurisdiction.

**2. Members representing a county.** One member must be **nominated** by each of the 6 8 counties with the most acreage in the unorganized or deorganized areas subject to the jurisdiction of the commission. The county commissioners of each of the counties shall **nominate a resident of that county to serve as a member of the commission. A county commissioner nominated to serve on the Land Use Regulation Commission may not vote on that nomination. In making nominations, the county commissioners shall actively seek and give consideration to persons residing in or near the unorganized or deorganized areas within the county. A nominee under this subsection must have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as these activities affect the commission's jurisdiction, and must:**

**A. Reside in the commission's jurisdiction;**

**B. Work in the commission's jurisdiction; or**

**C. Be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years.**

**If a county fails to nominate a member to the commission under this subsection or subsection 5 within 90 business days of a vacancy on the commission to be filled by that county, the Governor shall nominate a resident of that county meeting the criteria in subsection 1 to fill the vacancy.**

**3. Eligibility.** A state employee may not be **nominated** to or serve as a member of the commission. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission. If a county or municipality is a participant in an adjudicatory proceeding before the commission, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

**4. Terms.** All members are appointed to 4-year terms. Any member who has not been renominated by the Governor or the county commissioners prior to the expiration of that member's term may not continue to serve on the commission, unless the Governor notifies the Legislature in writing prior to the expiration of that member's term that extension of that member's term is required to ensure fair consideration of specific major applications pending before the commission. That member's term ends upon final commission decisions on the specific applications identified in the Governor's communication. Any member renominated by the Governor prior to the expiration of that member's term shall continue to serve on the commission until the nomination is acted upon by the Legislature. A vacancy during an unexpired term is filled as provided in this section, but only for the unexpired portion of the term.

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**6. Rules.** Unless otherwise provided in this chapter, rules adopted by the commission under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 8. 12 MRSA §684, first ¶**, as amended by PL 1999, c. 333, §4, is further amended to read:

The commission shall elect annually, from its own membership, a chair and such other officers it considers necessary. Meetings are held at the call of the chair or at the call of more than 1/2 of the membership. Meetings must be held at a location within the jurisdiction of the commission or another convenient location approved by the chair. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter H2, may adopt whatever rules it considers necessary for the conduct of its business. The commission shall keep minutes of all proceedings, which are a public record available and on file in the office of the commission. Members of the commission are compensated as provided in Title 5, chapter 379. Commission members must receive an orientation and annual continuing education on this chapter, commission rules and planning and regulatory processes. A quorum of the commission for the transaction of business is 4 members. No action may be taken by the commission unless upon approval by a vote of 4 members.

**Sec. 9. 12 MRSA §685**, as amended by PL 1987, c. 308, §5 and c. 508, is further amended to read:

**§ 685.Commission budget, financing and personnel**

The Commissioner of Conservation shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission shall give public notice of all contributions, in the state paper, stating the source, the amount and the purpose of such contributions. The commission may contract with municipal, ~~State-county, state and Federal Governments~~ federal governments or their agencies to assist in the carrying out of any of its assigned tasks. The Commissioner of Conservation, with the consent of a majority of the commission, shall appoint a director who ~~shall be~~ is the principal administrative, operational and executive employee of the commission. The director shall attend all meetings of the commission and ~~be~~ is permitted to participate fully but ~~shall~~ is not be a voting member of the commission.

The commission shall establish and maintain at least 2 field offices, one in Greenville and one in Ashland, designed principally to provide assistance to the public on permit applications and to carry out such other functions of the commission as appropriate. These field offices ~~shall~~ must be established ~~in~~ at locations in or close to the commission's jurisdiction and chosen to provide the maximum benefit to the public while minimizing costs. Historic levels of permitting activity, the convenience of access and the availability and cost of office facilities ~~shall~~ must be considered in choosing the field office locations. Each office ~~shall~~ must be open on a part-time basis at least 2 days a month or as public demand for the services of such field offices ~~warrant~~ warrants and as resources allow. Whenever practicable, the commission shall make use of existing personnel to staff these field offices. Personnel must receive regular training to address customer service and

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

other needs.

**Sec. 10. 12 MRSA §685-A, sub-§1**, as amended by PL 1999, c. 333, §5, is further amended to read:

**1. Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter H~~2~~, shall adopt ~~regulations~~rules for determining the boundaries of each major type of district in accordance with the following standards:

A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State;

B. Management districts: Areas that are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional development are not presently formulated nor additional development anticipated; and

D. Development districts: Areas ~~discernible as having patterns of intensiveness that are appropriate for~~ residential, recreational, commercial or industrial use or commercial removal of metallic minerals and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be necessary and desirable to carry out the intent of this chapter. The commission may delineate and designate planned subdistricts and establish standards unique to each to efficiently balance the benefits of development and resource protection.

**Sec. 11. 12 MRSA §685-A, sub-§4**, as amended by PL 1987, c. 737, Pt. C, §§22 and 106; PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

**4. Land use standards considered as minimum requirements.** Land use standards must be interpreted and applied by the commission as minimum requirements, adopted to reasonably and effectively promote health, safety and general welfare and ensure compliance with state plans and policies.

If the requirements of the adopted land use standards are at variance with the requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed restrictions or covenants, the more protective of existing natural, recreational and historic resources governs.

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**Sec. 12. 12 MRSA §685-A, sub-§4-A** is enacted to read:

**4-A. Transition from commission jurisdiction to the jurisdiction of a plantation or municipality.** Any portion of a land use district that subsequently becomes an organized municipality or part of an organized municipality or any plantation that adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059 continues to be regulated by the Maine Land Use Planning Commission pursuant to this chapter until such time as the plantation or municipality of which the regulated district is then a part adopts land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adopted by the commission.

A. Any municipality organized after September 23, 1971 or any plantation that adopts planning, zoning and subdivision control as provided in Title 30-A, section 7059 may submit to the commission and receive the approval of the commission of the following:

- (1) A comprehensive land use plan for that plantation or municipality;
- (2) Standards for determining land use district boundaries and uses permitted within the districts in that plantation or municipality;
- (3) A land use district boundary map for that plantation or municipality; and
- (4) Such other proposed regulations or standards as the commission considers necessary to achieve the purpose, intent and provisions of this chapter.

Upon request of the plantation or municipality, the commission shall prepare such plans, maps, regulations and standards as it considers necessary to meet minimum planning and zoning standards for its approval of those standards.

Upon obtaining approval, the plantation or municipality shall thereafter adopt, administer and enforce the approved plans, maps, regulations and standards, **except that the commission retains jurisdiction for any planned subdistrict within the municipality or plantation unless the owner of the land within the delineated area agrees to the transfer of the administration and enforcement of that planned subdistrict to the municipality or plantation.**

B. From time to time, the commission may review the administration and enforcement of local land use plans and regulations by plantations and municipalities that have adopted land use plans, maps, regulations and standards approved by the commission. If, following the review, the commission finds that any of the following have occurred, the commission may reestablish its jurisdiction over that plantation or municipality:

- (1) A plantation or municipality has repealed the land use plan, maps, standards or regulations necessary to satisfy the requirements of this subsection or has substantially modified the land use plan, maps, standards or regulations so that the resources of the

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

plantation or municipality are not reasonably protected;

(2) A plantation or municipality has abolished or does not have functioning the administrative bodies and officers necessary to implement the land use program as approved by the commission; or

(3) A plantation or municipality has not administered or enforced its land use plan, maps, standards or regulations in a manner that reasonably protects the resources in the plantation or municipality involved.

The action by the commission must conform with the provisions for rulemaking of the Maine Administrative Procedure Act.

Action taken by the commission to reestablish its jurisdiction over a plantation or municipality is effective immediately, but must be submitted to the current or next regular session of the Legislature for approval. If the Legislature fails to act, the action of the commission continues in effect.

**Amend the bill by striking out all of Sec. 13**

**Sec. 14. 12 MRSA §685-A, sub-§8-A, ¶B,** as enacted by PL 1999, c. 333, §10, is amended to read:

B. The proposed land use district ~~satisfies a demonstrated need in the community or area and~~ has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

**Further amend the bill by deleting all of Sec. 15, Sec. 16 and Sec. 17 (p. 8, lines 1-34)**

**Sec. 18. 12 MRSA §685-B, sub-§1-A, ¶B,** as amended by PL 2009, c. 270, Pt. D, §1, is further amended to read:

B. A Except for projects that are located in a planned subdistrict **that was approved or accepted by the commission for processing prior to September 1, 2012,** a permit is not required for those aspects of a project approved by the Department of Environmental Protection under Title 38 if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed. Notice of the intent to develop and a map indicating the location of the proposed development must be filed with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection;

**Amend the bill by inserting a new Sec. after Sec. 18 to read:**

**Sec. X. 12 MRSA §685-B, sub-§1-A, ¶B-1.** is enacted to read:

**B-1. Except for projects that are located in a planned subdistrict that was approved or**

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and that applicable land use standards are met before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph.

**Sec. 19. 12 MRSA §685-B, sub-§1-C** is enacted to read:

**1-C. Delegation to county.** The commission may establish standards by which authority may be delegated to a county, upon request of the county commissioners, to approve, approve with reasonable conditions or deny applications to conduct specified activities requiring a permit and to enforce compliance with the permit. Any person aggrieved by a decision of a county has the right to a review of appeal that decision to the commission. A request for such a review  
**Such an appeal** must be made within 30 days after the county decision.

**Amend the bill in Sec. 20 to read:**

Note: Sub-§2-C is being repealed and replaced so all of the language is underlined. Much of the text is identical to former sub-§2-C. Changes are indicated in bold and strike-out.

**Sec. 20. 12 MRSA §685-B, sub-§2- C** is repealed and replaced to read:

**2-C. Wind energy development; community-based offshore wind energy projects; determination deadline.** For purposes of this subsection, "expedited permitting area," "expedited wind energy development" "**grid-scale wind energy development**" and "wind energy development" have the same meanings as in Title 35-A, section 3451. The following provisions govern wind energy development.

- A. The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A with a generating capacity of 100 kilowatts or greater or a community-based offshore wind energy project a use requiring a permit, but not a special exception, within the affected districts or subdistricts.
- B. **All grid-scale wind energy development proposed for the unorganized or deorganized areas of the state is reviewed and permits are issued by the**



DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**Department of Environmental Protection under Title 35-A, chapter 34-A and Title 38, section 489-A-1.**

- C. For an offshore wind energy project that is proposed within one nautical mile of an island within the unorganized or deorganized areas, the commission shall review the proposed project to determine whether the project qualifies as a community-based offshore wind energy project and therefore is within the jurisdiction of the commission.
- D. Except for a grid-scale wind energy project, the commission may require an applicant to provide a timely notice of filing prior to filing an application for, and may require the applicant to attend a public meeting during the review of, a wind energy development or a community-based offshore wind energy project. For projects or development located within the expedited permitting areas, the commission shall render its determination on an application for such a development or project within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the commission considers an application for a community-based offshore wind energy project. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit information into the record of the commission's proceedings.
- E. At the request of an applicant, the commission may stop the processing time for a period of time agreeable to the commission and the applicant. The expedited review period specified in paragraph D does not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the wind energy development or community-based offshore wind energy project if the commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development or project.

**Amend the bill by inserting a new Sec. after Sec. 20 to read:**

**Sec. Y. 12 MRSA §685-B, sub-§3-A is amended to read:**

**3-A. Hearings and procedures.** Hearings and procedures in connection with the review and approval of a permit application are subject to this subsection. **To the extent practicable, hearings held under this subsection shall be held at a location in close proximity to the project or projects under review.**

- A. The commission may determine on its own motion to hold a hearing on the application.
- B. If the commission determines to act upon a permit application without a hearing, the commission, within 90 days after receiving the complete application, shall make findings

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

C. Any person aggrieved by a decision of the commission or its staff concerning any permit application upon which no hearing was held may, within 30 days of that decision, petition the commission for a hearing. The commission is not required to hold a hearing, but shall respond within 45 days of receipt of the petition by notifying the petitioner in writing of the date, time and place set for the requested hearing or of the denial of the request.

D. Within 60 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order either granting approval, subject to reasonable terms and conditions that the commission determines appropriate in order to fulfill the requirements and intent of this chapter, the comprehensive land use plan and the commission's standards, or denying approval of the application as proposed.

**Sec. 21. 12 MRSA §685-B, sub-§4**, as amended by PL 2009, c. 615, Pt. D, §4, is further amended to read:

**4. Criteria for approval.** In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may consider appropriate. In making a decision under this subsection regarding an application for a community-based offshore wind energy project, the commission may not consider whether the project meets the specific criteria designated in section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the commission's review of related potential impacts of the project as determined by the commission.

The commission may not approve an application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, sections 4807 to 4807-G, the site location of development laws, Title 38, sections 481 to 490, and the natural resource protection laws, Title 38, sections 480-A to 480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;

B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses,

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

scenic character and natural and historic resources in the area likely to be affected by the proposal. In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding ~~an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a community-based offshore, the commission shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452;~~

In making a determination under this paragraph regarding a wind energy development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for location within the expedited permitting area, the commission shall consider the development's or project's effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35-A, section 3452.

**C-1. With respect to a wind energy development that has a generating capacity of 100 kilowatts or greater, the person proposing the development has received certification from the Department of Environmental Protection in the manner provided under Title 35-A, section 3456 ;**

D. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site;

E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto; and

F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected. ~~Except as otherwise provided in Title 35-A, section 3454, the~~ The commission shall permit the applicant and other parties to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.

**Sec. 22. 12 MRSA §685-B, sub-§4-B**, as amended by PL 2009, c. 615, Pt. D, §5, is further amended to read:

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**4-B. Special provisions; community-based offshore wind energy project.** In the case of a ~~wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a generating capacity greater than 100 kilowatts, or~~ a community-based offshore wind energy project, the developer must demonstrate, in addition to requirements under subsection 4, that the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will meet the requirements of the Board of Environmental Protection's noise control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

B. Will be designed and sited to avoid undue adverse shadow flicker effects; and

C. Will be constructed with setbacks adequate to protect public safety, as provided in Title 35-A, section 3455. In making findings pursuant to this paragraph, the commission shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

~~D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451, subsection 10, within the State, as provided in Title 35-A, section 3454, if the development is an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4.~~

**Sec. 23. 12 MRSA §685-C, sub-§1**, as amended by PL 2009, c. 375, §1, is further amended to read:

**1. Comprehensive land use plan.** The commission shall ~~adopt~~ prepare an official comprehensive land use plan, referred to in this subsection as "the plan," for the unorganized and deorganized ~~townships~~areas of the State.

The commission must use the plan as a guide in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.

The plan may consist of maps, data and statements of present and prospective resource uses that generally delineate the proper use of resources, and recommendations for its implementation.

The commission shall hold public hearings to collect information to be used in establishing the ~~land use guidance~~ plan. The public hearings must be conducted according to commission rules adopted in accordance with procedures for the establishment of rules pursuant to Title 5, chapter 375, subchapter 2.

The commission may, on its own motion or petition of any state agency or regional planning commission, hold such other hearings as the commission considers necessary from time to time for the purpose of obtaining information helpful in the determination of its policies, the carrying out of its duties or the formulation of its land use standards or rules.

~~The commission may not adopt a plan or portion of a plan unless:~~

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

A. ~~The tentative plan has been submitted to each regional planning commission and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days; may not finalize a plan or a portion of a plan without:~~

(1) Submitting the tentative plan to each regional planning commission and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days;

(2) Submitting the tentative plan to the State Planning Office or its successor, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its comments and recommendations, if any, to the commission within 30 days;

(3) Considering all comments submitted under paragraphs A and B; and

(4) Submitting the tentative plan to the joint standing committee of the Legislature having jurisdiction over conservation matters and the committee reviewing the plan at a public meeting. The commission shall brief the committee on any anticipated changes to land use districts and subdistricts based on revisions in the comprehensive land use plan and a projected timetable for rulemaking to adopt these changes.

B. ~~The tentative~~After the commission has finalized a plan has been submitted to the State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its or a portion of a plan, but prior to adoption, the commission shall provide a copy to the Commissioner of Conservation, who shall submit the finalized plan or a portion of the plan to the Governor for comments and recommendations, if any, to. The commissioner shall submit the finalized plan or a portion of the plan including the Governor's comments to the Legislature within 30 days after the convening of the next regular session for approval. The Legislature shall, by act or resolve, approve, disapprove or require changes to the plan or any portion of the plan prior to adjournment. If the plan or a portion of the plan is approved or the Legislature fails to act on the plan or a portion of the plan before adjournment, the plan or a portion of the plan may be finally adopted by the commission within 30 days;. If the plan or a portion of the plan is disapproved or revisions are required, the plan or a portion of the plan must be revised by the commission and resubmitted to the Legislature for approval by act or resolve. The joint standing committee of the Legislature having jurisdiction over conservation matters may submit legislation to implement the provisions of this paragraph.

C. ~~The commission has considered all comments submitted under paragraphs A and B; and~~

D. ~~The commission has submitted the tentative plan to the joint standing committee of the Legislature having jurisdiction over conservation matters and the committee has reviewed the plan at a public meeting. The commission shall brief the committee on any anticipated changes to land use districts and subdistricts based on revisions in the comprehensive land use plan and a projected timetable for rulemaking to adopt these changes. The tentative plan must be submitted to the committee a minimum of 30 days prior to the commission's final vote.~~

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

~~Upon adoption of the official land use plan by the commission, the commission shall submit the plan to the Governor for approval. The Governor shall approve or disapprove the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to act, the plan is deemed approved. This subsection also applies to any alteration in the comprehensive plan.~~

**Sec. 24. 12 MRSA §685-C, sub-§1-A** is enacted to read:

**1-A. Regional comprehensive land use plans.** A county, separately or in partnership with another county or counties, may request the commission to develop and implement a regional comprehensive land use plan and associated zoning for all or a portion of the territory within the jurisdiction of the commission in the county or counties making the request. If the commission provides assistance under this subsection, it shall:

A. Consult with regional economic development organizations and regional planning and development districts described in Title 30-A, chapter 119;

B. Seek input from representatives of service center communities as defined in Title 30-A, section 4301, subsection 14-A and neighboring municipalities in the area for which assistance is requested; and

C. Provide for involvement by members of the public, landowners in the unorganized and deorganized areas of the State and residents of the unorganized and deorganized areas of the State.

**Sec. 25. 12 MRSA §685-F, sub-§1**, as amended by PL 2009, c. 492, §3, is further amended to read:

**1. Designation as extraordinary project.** The director of the Maine Land Use Regulation-Planning Commission, referred to in this section as "the director," may designate a proposed project requiring review and approval under this chapter as an extraordinary project when the director determines that ~~the project is a wind energy development, as defined in Title 35-A, section 3451, subsection 11 or~~, because of the project's size, uniqueness or complexity, review of the project application is likely to:

A. Significantly impair the capacity of the commission's staff and cooperating state agencies to review other applications in a timely manner; or

B. Require the commission to incur costs that exceed the funding provided in accordance with section 685-G.

A project is considered to significantly impair the capacity of the commission's staff if review of that project is likely to occupy the equivalent of at least one person working full-time on that project for a minimum of 4 months. Designation as an extraordinary project must be made at or prior to the time the application is accepted as complete. The director shall notify the applicant in writing upon making the designation.

**Sec. 26 (page 14, lines 18-43 are removed)**

**Sec. 27. 12 MRSA §685-H** is enacted to read:

**§ 685-H. Annual performance report**

**1. Report due.** By January 15, 2013 and by January 15th annually thereafter, the commission shall report to the joint standing committee of the Legislature having jurisdiction over conservation matters regarding the commission's performance under this subchapter for the previous year and goals for the coming year.

**2. Report components.** The report must include:

- A. The number of permits processed for the previous calendar year, by category;
- B. A summary of preapplication consultation activities;
- C. The average time for rendering a decision, with goals for improving processing times;
- D. The status of regional planning and zoning initiatives, with goals for the calendar year; and
- E. A description of staff and commission training initiatives to ensure increased customer service and consistency in application of commission rules and regulations, with goals for the calendar year ahead.

**3. Public meeting.** The chair of the commission shall present the annual performance report to the joint standing committee of the Legislature having jurisdiction over conservation matters at a meeting of that committee. The committee shall give the public an opportunity to comment on the performance report at this meeting.

**Sec. 28. 12 MRSA §689**, as amended by PL 2009, c. 642, Pt. B, §1, is further amended to read:

**§ 689. Appeal**

Persons aggrieved by final actions of the commission, including without limitation any final decision of the commission with respect to any application for approval or the adoption by the commission of any district boundary or amendment thereto, may appeal therefrom in accordance with Title 5, chapter 375, subchapter 7. ~~Appeals of final actions of the commission regarding an application for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, must be taken to the Supreme Judicial Court sitting as the Law Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The Law Court has exclusive jurisdiction over requests for judicial review of final actions of the commission regarding expedited wind energy developments. This right of appeal, with respect to any commission action to which this right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.~~ **To the extent practicable, meetings and public hearings held during the pendency of an appeal must be held at a location in close proximity to the project or projects under review.**

**Sections 29, 30 and 31 are removed from the bill. – related to the county Opt-Out**

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**Sec. 32. 35-A MRSA §3451, sub-§8**, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

**8. Primary siting authority.** "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9-9-A; or

B. The Maine Land Use ~~Regulation~~Planning Commission, in the case of an expedited wind energy development subject to the Maine Land Use ~~Regulation Commission's~~ jurisdiction pursuant to Title 12, chapter 206-A a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19 **and wind energy development in the unorganized and deorganized areas as defined in Title 12, section 682, subsection 1 that is not grid-scale wind energy development.**

Amend the bill by inserting 3 new Sections after Sec. 32 (p. 16, line 35) to read:

**Sec. Z. 35-A MRSA §3454**, is amended in the 1<sup>st</sup> paragraph and sub-§ 2 to read:

**§3454. Determination of tangible benefits; requirements**

In making findings pursuant to Title 12, ~~section 685-B, subsection 4~~ or Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

**1. Documentation.** As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

- A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project;
- B. Estimated annual generation of wind energy;
- C. Projected property tax payments;
- D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and
- E. Any other tangible benefits to be provided by the project.

**2. Community benefits package requirement.** Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 12, ~~section 685-B, subsection 4-B~~ and Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community



DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

**Sec. ZZ. 35-A MRSA §3456, sub-§1** is amended to read:

**§3456. Siting considerations for smaller-scale wind energy development in organized areas**

**1. Construction and operation requirements.** A person may not construct or operate a wind energy development, other than a grid-scale wind energy development, ~~that is located in the State's organized area~~ without first obtaining a certification from the department that the generating facilities:

- A. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6;
- B. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and
- C. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities.

A person proposing a wind energy development subject to certification under this section shall apply to the department for certification using an application provided by the department and may not begin construction until the certification is received.

**Sec. ZZZ. 38 MRSA §480-E-1** is amended to read

**§480-E-1. Delegation of permit-granting authority to Maine Land Use Regulation Commission**

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3.

**1. Activity located in organized and unorganized area.** If an activity is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission is not subject to the requirements of this article except as provided in subsection 2.

**2. Allowed use.** If an activity is located as described in subsection 1, the department may review that portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of an activity approved by the department under this subsection.

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**3. Offshore wind power project.** The department shall issue all permits under this article for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

**4. Projects reviewed under site location of development law.** The department issues all permits required under this article for projects wholly or in part in the jurisdiction of the Maine Land Use Planning Commission that are subject to review and permitting under article 6.

Review by the department of subsequent modifications to a development approved by the department is required, except that the Maine Land Use Regulation Commission shall issue modifications to permits issued by the department pursuant to this article prior to September 18, 1999. The Maine Land Use Regulation Commission shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections.

The Maine Land Use Regulation Commission, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.

**Sec. 34. 38 MRSA §488, sub-§9-A** is enacted to read:

**9-A. Development within unorganized areas.** Except for development described in paragraphs A, B, and C development located within the unorganized and deorganized areas, as defined in Title 12, section 682, subsection 1, is subject to review by the department for compliance with this article. The department shall review development within the unorganized and deorganized areas in accordance with section 489-A-1.

A. A community-based offshore wind energy project, as defined in Title 12, section 682, subsection 19, is reviewed under Title 12, section 685-B, subsection 2-C and is exempt from the requirements of this article.

B. **Except for grid-scale wind energy development,** development within a planned subdistrict defined in Title 12, section 682, subsection 20 **and approved or accepted for processing prior to September 1, 2012** is reviewed by the commission and is exempt from the requirements of this article.

C. **An amendment or revision to a development approved by the Land Use Regulation Commission prior to September 1, 2012 is exempt from review under this article unless the proposed revision by itself is a development of state or regional significance that may substantially affect the environment.**

**Subdivision plans approved and orders issued by the department under this article must be recorded in the registry of deeds in the county in which the development is located within 90 days.**

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**Violation and enforcement provisions in chapter 2, subchapter 1 apply to development reviewed by the department under this subsection and section 489-A-1.**

**Sec. 35. 38 MRSA §489-A-1** is enacted to read:

**§ 489-A-1. Department review of development within the unorganized and deorganized areas**

**1. Review.** Except as provided in section 488, subsection 9-A, paragraphs A, B, and C, the department shall review development within the unorganized and deorganized areas of the State.

**2. Criteria for approval.** The department shall approve a development proposal under this section if:

- A. The proposed development is an allowed use within the subdistrict or subdistricts in which it is to be located. Subdistricts and allowed uses are established in rule by the Maine Land Use Planning Commission in accordance with Title 12, section 685-A;
- B. The standards established under section 484 are met;
- C. Standards established in rules adopted under section 489-E to implement this section are met; and
- D. **The Maine Land Use Planning Commission has certified that the proposed development meets any land use standard established by the commission and applicable to the project that is not considered in the department's review.**

For a development or part of a development within the unorganized or deorganized areas of the State, the department may request and obtain technical assistance and recommendations from the Maine Land Use Planning Commission. The commission shall respond to the requests in a timely manner. The department shall consider the recommendations of the commission in acting upon a development application.

Amend the bill by inserting 3 new Sec. after Sec. 35 to read:

**Sec. U. Directive to initiate prospective zoning.** The Maine Land Use Planning Commission shall initiate prospective zoning in the unorganized and deorganized areas of the State. The commission shall allocate staff resources to prospective zoning in areas prioritized by the commission and shall coordinate prospective zoning in cooperation with efforts of local planning organizations and regional planning and development districts. In the 2013 annual report submitted under Title 12, section 685-H the commission shall identify the area or areas for which prospective zoning has begun and provide a time line for completion of these initiatives.

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

**Sec. UU. Directive to provide opportunities for pre-application discussions.** The Maine Land Use Planning Commission shall establish a process by which an applicant can request a public preapplication meeting with the LUPC commissioners to discuss the proposed project.

**Sec. UUU. Designation of planned subdistricts.** The term “planned subdistrict” as defined in Title 12, section 682, subsection 20 and used in Title 12, chapter 206-A includes, but is not limited to, the following concept plans, resources protection plans and planned development districts approved by the Maine Land Use Regulation Commission or accepted for processing prior to March 15, 2012:

<b>Planned Subdistricts in LURC jurisdiction as of 3/16/12: Includes Resource Protection Plans (P-RP), Concept Plans (P-RP), and Planned Development Subdistricts (D-PD). Plan and permit numbers are provided.</b>			
<b>Project</b>	<b>P-RP Resource Plan</b>	<b>P-RP Concept Plan</b>	<b>D-PD Planned Development Subdistrict</b>
Dix Island Resource Plan (Multiple landowners)	Plan #001 ZP 089		
Hewett Island Resource Plan (Multiple landowners)	Plan #002 ZP 057		
Penobscot River Resource Plan (expired) (Multiple landowners)- expired	Plan #003 ZP 192 and- ZP 654		
St. John River Resource Plan (Multiple landowners)	Plan #004 ZP 224		
White Mountain National Forest Resource Plan (U.S. Forest Service)	Plan #005 ZP 155		
Metinic Island Resource Plan – North Half (Multiple landowners)	Plan #006 ZP 531		
Attean Twp. and Dennistown Plt. Concept Plan (Lowell & Co. Timber Associates)		Plan #007 ZP 532	
Metinic Island Resource Plan – South Half (Multiple landowners)	Plan #008 ZP 578		
First Roach Pond Concept Plan (Plum Creek Land Co.)		Plan #009 ZP 659	
Penobscot River Resource Plan – East- Branch (Irving Woodlands, LLC)- expires 6- 27-12	Plan #010 ZP 664		
Penobscot River Resource Plan – Lower West Branch (Multiple landowners)	Plan #011 ZP 671		
Brassua Lake Concept Plan (Moosehead Wildlands, Inc)		Plan #012 ZP 682	
Foss Pond, Hilton Ponds and Portions of Whetstone Pond Concept Plan (Kingsbury Plt.) (Linkletter & Sons, Inc)		Plan #013 ZP 693	
Moosehead Lake Region Concept Plan (Plum Creek Maine Timberlands, LLC and Plum Creek Land Co.)		Plan #014 ZP 707	
Kibby Wind Power Project (TransCanada Maine Wind Development, Inc.)			ZP 709 DP 4794
Stetson Wind Power Project (Evergreen			ZP 713

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

Wind V, LLC/First Wind)			DP 4788
Saddleback Ski Resort (Saddleback Land & Timber Corp.)			ZP 372 DP 4131

Amend the bill in Sec. 36 to read:

**Sec. 36. Transition provisions.** The following provisions govern the transition of the Maine Land Use Regulation Commission to the Maine Land Use Planning Commission.

1. The members of the Maine Land Use Regulation Commission serving on the effective date of this Act continue as members of the Maine Land Use Planning Commission until the expiration of their terms under the Maine Revised Statutes, former Title 12, section 683. **The term of any member which expires after the effective date of this Act but before December 15, 2012 is extended until December 15, 2012.** To implement the difference in the number of members of the Maine Land Use Regulation Commission and the Maine Land Use Planning Commission, **beginning December 15, 2012,** 2 additional members must be nominated under Title 12, section 683-A from the 2 counties with the highest acreage of unorganized and deorganized areas. When the term of a member serving on the commission under former Title 12, section 683 expires, a member must be nominated from the county with the next highest acreage of unorganized and deorganized areas until all 6 county nominations have been completed. When all county positions have been nominated, the next ~~3 vacancies~~ vacancy must be filled by the nomination of the ~~3 public members~~ **member** nominated by the Governor. Notwithstanding Title 12, section 685, until 9 members have been confirmed as members of the commission, a quorum of the commission for the transaction of business is 4 and no action may be taken by the commission unless approved by a vote of 4.

2. The Maine Land Use Planning Commission is the successor in every way to the powers, duties and functions of the former Maine Land Use Regulation Commission as provided in this Act.

3. All existing rules, regulations and procedures in effect, in operation or adopted in or by the former Maine Land Use Regulation Commission or any of its administrative units or officers and all permits, approvals and decisions of the former Maine Land Use Regulation Commission are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

4. All existing contracts, agreements and compacts currently in effect involving the former Maine Land Use Regulation Commission continue in effect.

5. Any positions authorized and allocated subject to the personnel laws of the former Maine Land Use Regulation Commission are transferred to the Maine Land Use Planning Commission and may continue to be authorized.

6. All records, property and equipment previously belonging to or allocated for the use of the former Maine Land Use Regulation Commission become on the effective date of this Act the records, property and equipment of the Maine Land Use Planning Commission. The Maine Land Use Planning Commission shall transfer records received from the former Maine Land Use

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

Regulation Commission or provide copies of those records to the Department of Environmental Protection upon the request of the department as necessary to implement the provisions of this Act transferring authority to the department for permitting and regulation under the site location of development laws under Title 38, chapter 3, subchapter 1, article 6 or expedited permitting of grid-scale wind energy development under Title 35-A, chapter 34-A.

7. All existing forms, licenses, permits, letterheads and similar items bearing the name of or referring to the "Maine Land Use Regulation Commission" may be used by the Maine Land Use Planning Commission until existing items are exhausted.

8. The Department of Environmental Protection shall adopt rules necessary to review applications for development under Title 38, section 489-A-1. These rules must be adopted ~~and in effect~~ no later than January 1, 2013. In reviewing development under Title 38, section 489-A-1 prior to final adoption of the department's rules, the department shall use standards established in Title 12, chapter 206-A and rules adopted under that chapter as those rules apply in the area proposed for development. Rules adopted pursuant to this subsection are ~~routine technical~~ **major substantive** rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 37. Effective date.** Those sections of this Act that repeal the Maine Revised Statutes, Title 38, section 488, subsection 9 and enact Title 38, section 480-E-1 sub-§- 4, Title 38, section 488, subsection 9-A and §489-A-1 take effect August 1, 2012.

**Sec. 38. Maine Revised Statutes amended; revision clause.** Wherever in the Maine Revised Statutes the words "Maine Land Use Regulation Commission" appear or reference is made to that entity or those words, those words are amended to read or mean, as appropriate, "Maine Land Use Planning Commission" or "commission," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Amend the bill by relettering or renumbering any nonconsecutive Part, letter or section number to read consecutively.

**SUMMARY**

This amendment removes the provisions for a county to assume authority for land use planning and regulation in the unorganized and deorganized areas within that county. It increases the number of county nominees to the Land Use Planning Commission to 8 and requires all members to be confirmed by the Senate. It includes a provision for the Governor to make an appointment if a county does not make a nomination within 90 business days of that county's being eligible to make a nomination. It requires county nominees to meet certain qualifications. It specifies that county representatives may not be appointed before December 15, 2012.

It specifies that the Land Use Planning Commission retains jurisdiction over a planned subdistrict if a municipality or plantation in which the planned subdistrict is located assumes authority for land use planning and regulation unless the owner of the land delineated as a planned subdistrict agrees to the transfer of authority.

It clarifies which projects will be reviewed and permitted by the Department of Environment Protection. It clarifies that the Land Use Planning Commission must receive certification from the Department of Environment Protection prior to permitting non-grid-scale

DRAFT UNANIMOUS COMMITTEE AMENDMENT  
LD 1798

wind energy development. It clarifies that certification from the Land Use Planning Commission is needed prior to the Department of Environmental Protection issuing permits under the site location of development law. The Land Use Planning Commission retains review and permitting of projects, which would otherwise be reviewed by the Department of Environment Protection under site law, in planned subdistricts approved or accepted for review prior to September 1, 2012.

It adds a section of unallocated law that directs LUPC to establish a process by which an applicant can request a public preapplication meeting with the LUPC commissioners to discuss the proposed project and a section directing LUPC to initiate prospective zoning and to provide information on the initiatives in their January 2013 report. It lists in unallocated law, all planned subdistricts that have been approved and proposals for planned subdistricts that have been accepted for processing as of March 15, 2012.

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